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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD ALLEN COCHRAN,

Defendant and Appellant.

C082950

(Super. Ct. No. 16CF00295)

This is an appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We briefly recount the facts and proceedings in accordance with *People v. Kelly* (2006) 40 Cal.4th 106, 110, 123-124.

On March 23, 2016, defendant Richard Allen Cochran pleaded guilty to felony domestic violence (Pen. Code, § 273.5, subd. (a)), violating a domestic relations court order (Pen. Code, § 273.6, subd. (a)), battery (Pen. Code, § 242), and petty theft (Pen. Code, § 484, subd. (a)). In exchange for defendant's plea, the People agreed defendant would receive probation.

On May 11, 2016, the trial court placed defendant on three years of formal probation. As a condition of defendant's probation, the trial court issued a no contact order, directing defendant to have no contact with either of his victims. The court also ordered defendant to pay numerous fines and fees and reserved jurisdiction over the issue of direct victim restitution.

On May 23, 2016, the probation department filed a petition alleging defendant violated the terms of his probation by making contact with one of his victims. Defendant admitted the violation.

The trial court subsequently sentenced defendant to an aggregate term of four years in state prison. The court executed the previously stayed \$300 probation revocation fine (§ 12022.44) and imposed but stayed a \$300 parole revocation fine (§ 1202.45). The court affirmed the fines and fees imposed at defendant's initial sentencing and waived those fines the court determined defendant was now unable to pay as a result of his prison sentence.<sup>1</sup> The court also denied defendant's request to terminate the 10-year no contact order because it protected the victim of defendant's domestic violence.

Defendant appeals without a certificate of probable cause.

On March 29, 2017, defendant's appellate counsel sent a *Fares*<sup>2</sup> letter to the trial court, requesting the judgment be corrected to include an additional day of presentence custody credit. The trial court has not filed an amended judgment.

## DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende, supra*,

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<sup>1</sup> The court also sentenced defendant to a concurrent one year-term in Butte County Superior Court case No. SCR099008, a misdemeanor.

<sup>2</sup> *People v. Fares* (1993) 16 Cal.App.4th 954.

25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing the opening brief. More than 30 days elapsed, and we received no communication from defendant.

After reviewing the record, we agree with defendant's appellate counsel that defendant is entitled to an additional day of presentence custody credit. Defendant was initially taken into custody on March 4, 2016. The probation report, however, indicates presentence custody credits were calculated beginning on March 5, 2016. This is an error. Defendant is thus entitled to 89 actual days of presentence custody credit, not the 88 that he was awarded, for a total of 177 days of presentence custody credit. We modify the judgment accordingly.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

#### DISPOSITION

The judgment is modified to provide for 89 days of actual presentence custody credit, for a total of 177 days of presentence custody credit. The trial court is directed to prepare an amended abstract of judgment accordingly, and to forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

\_\_\_\_\_NICHOLSON\_\_\_\_\_, J.

We concur:

\_\_\_\_\_RAYE\_\_\_\_\_, P. J.

\_\_\_\_\_HOCH\_\_\_\_\_, J.